

October 2007

## **FACT SHEET: FAMILY LAW – RELOCATION**

### **Is there a ‘shared parental responsibility’ order?**

An order for ‘shared parental responsibility’ provides that parties are required to consult with each other and make a genuine attempt to come to a joint decision about any major long-term issues in relation to the child/ren. This includes any changes to the child’s living arrangements that make it significantly more difficult for the child to spend time with the other parent.

Where there is a ‘shared parental order’ in place, the parent wishing to relocate must consult the other parent. Relocating without consultation will be a breach of the order. Even if there are no court orders in place, you should attempt to obtain consent of the other parent. If you relocate without doing so, the court may order that you and the child return.

### **Attend Family Dispute Resolution**

If the other parent refuses to consent to relocation, you may be required to attend mediation. In most circumstances (unless exemptions apply, for example, there is a history of family violence or the matter is urgent) it is compulsory for parties to attend Family Dispute Resolution (FDR) with a registered FDR practitioner in an attempt to resolve parenting matters. You may be able to reach an agreement regarding relocation in mediation. Contact Family Relationships Australia on 1800 050 321 for your nearest FDR practitioner.

### **Make Application to the Court**

If an exemption to FDR applies or you are unable to resolve the issue in mediation, you may then make an application to the Family Court or the Federal Magistrates Court for orders allowing the relocation.

### **Best Interests of the Child**

In considering an application for relocation, the child’s best interests are paramount. In determining what is in the child’s best interest, the court is to consider the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from harm or being exposed to abuse or family violence.

There are also a number of additional considerations the court is required to take into account. For example, the nature of the relationship between the child and each parent, the willingness of each parent to facilitate a relationship between the child and the other parent, the likely effect of any changes in the child’s circumstances, including effect of separation from a parent.

While the best interests of the child is the paramount consideration, it is not the sole consideration. The court will also take into account to the legitimate interests of both parents.

## **Details of Your Application**

If filing in the Family Court, you must file:

- FDR Certificate (if mediation was unsuccessful); or
- 'Non-Filing of an FDR Certificate Affidavit';
- 'Application for Final Orders'; and
- an Affidavit (providing evidence supporting relocation).

Forms may be downloaded from the Family Court website: [www.familycourt.gov.au](http://www.familycourt.gov.au)

If filing in the Federal Magistrates Court, you must file:

- FDR Certificate (if mediation was unsuccessful); or
- 'Non-Filing of an FDR Certificate Affidavit'; and
- 'Application' Form;
- 'Information Sheet'; and
- 'Affidavit' (providing evidence supporting relocation).

Forms may be downloaded from the Federal Magistrates Court website: [www.fmc.gov.au](http://www.fmc.gov.au)

In both the Family Court and the Federal Magistrates Court, there is a filing fee of \$145. If you have a concession card or can demonstrate hardship, the fees may be waived. You will need to complete a waiver of court fees form.

## **Proposed Orders**

In your application to the court for relocation, you will need to draft the orders (proposals) that you are seeking. For example, orders allowing your relocation with the child. It may also be a good idea to propose an alternative order, for example, orders for your relocation with the child and that the other parent also relocate.

In your proposed order, you should also detail how the child will spend time with and communicate with the other parent. It is important to demonstrate how the child will be able to maintain a meaningful relationship with the other parent through various forms of communication.

The court will consider the proposals of both parties in light of the best interests of the child considerations. It is important to note that the court is not limited to the competing proposals of the parties. The court may, if in the best interest of the child, propose to make orders that were not sought by either party.

## **What you will need to demonstrate**

You will need to demonstrate to the court that the proposed relocation is in the best interests of the child. Evidence outlining the advantages of the relocation may include:

- closer to extended family;
- better schooling;
- higher quality housing;
- capacity of other parent to relocate.

You may also provide evidence of the advantages of relocation for you and how that impacts on the best interests of the child.

## **Contacts**

**Family Court & Federal Magistrates Court Newcastle:** Ph: 1300 352 000

Email: [enquiries@familylawcourts.gov.au](mailto:enquiries@familylawcourts.gov.au)

**Family Relationships Australia:**

Ph: 1800 050 321

*Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.*

*Acknowledgements: Livermore M, 'The Family Law Handbook' University NSW Press, Sydney, 2007*